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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment to the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

TO: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Dated: March 25, 1996

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I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits Reply Comments in response to the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-captioned docket.^{1/} Nextel filed Comments on March 1, 1996 supporting the Commission's proposal to allow Commercial Mobile Radio Service ("CMRS") licensees to offer wireless fixed services on their existing spectrum allocations.

II. DISCUSSION

A. The Commission Must Allow All CMRS Providers To Offer Fixed Services

A review of the comments filed in this proceeding reveals wide-spread industry support for the provision of fixed wireless services by CMRS licensees.^{2/} However, some of the commenters

^{1/} Notice of Proposed Rule Making, FCC 96-17, released January 25, 1996.

^{2/} See, e.g. 360 Communications Co. at 1; Ad Hoc Rural Cellular Coalition at 3; Airtouch Communications, Inc. at 2; American Petroleum Assoc. at 4; BellSouth at 1; Celpage, Inc. at 3; Century Cellunet, Inc. at 1; Commercial Internet Exchange Assoc. at

did not explicitly support fixed wireless services by all CMRS providers. For example, Airtouch limited its discussion of fixed CMRS services to Personal Communications Services ("PCS"), cellular and paging while Omnipoint Corporation discussed only PCS fixed services.^{3/}

To ensure that all CMRS providers are subject to similar rules and regulations, the Commission must permit the provision of fixed services by all CMRS licensees, including Specialized Mobile Radio ("SMR") services, cellular, paging and PCS.^{4/} Allowing all CMRS to provide fixed services would ensure regulatory parity among wireless providers, and it would provide each of them increased operational flexibility and the ability to expand the scope of their potential service offerings. This would result in enhanced competition among CMRS providers, and it would allow the marketplace to determine the most economical and efficient spectrum use.

B. CMRS-Provided Fixed Services Should Be Regulated As CMRS Services

A number of commenters, particularly the Local Exchange Carriers ("LECs"), argued that CMRS fixed services should be regulated the same as LEC-provided fixed services. For example,

2; and GTE Service Corp. at 2.

^{3/} Airtouch at 10; Omnipoint Corp. at pp. 2-4.

^{4/} See, e.g., Nextel at 2; the American Mobile Telecommunications Association at 5; Alliance of LEC-Affiliated Wireless Service Providers at p. 5; Celpage at 5; Cole, Raywid and Braverman at 1; Comcast Corporation ("Comcast") at 2-3; and PACS Providers Forum at 4.

Bell Atlantic argues that CMRS fixed services should be regulated as LEC services in light of Section 332 (c) (3) (A) which permits state regulation of CMRS services if and when a CMRS service becomes a "substitute" for LEC services. Bell Atlantic claims that, since these CMRS services will be state regulated when they become a substitute for LEC services, they should be immediately regulated by the states so CMRS providers will not be subject to new disruptive regulations in the future.

This position writes Section 332(c)(3)(A) out of the Communications Act. Congress expressly included it in recognition of the current competitive differences between CMRS providers and LECs. CMRS providers are new entrants relative to LECs, they do not have the market power of the LECs, and without some regulatory distinctions, they may not be able to increase their competitiveness vis-a-vis LECs. Thus, Section 332(c)(3)(A) allows CMRS carriers to introduce new services, including the fixed services proposed in this proceeding, without the extra regulatory burdens of state regulation. Then, at such time the CMRS services become a substitute for LEC services and thereby directly compete with them, states arguably would have the authority to regulate them.

Nextel agrees with Comcast that LECs with wireless holdings should not be permitted to mix their LEC and CMRS services to such an extent that they claim all of their services are CMRS and thereby escape all state regulation.^{5/} The Commission should

^{5/} Comcast at 7.

impose regulations, e.g., structural separation, so LECs cannot simply classify their LEC services as CMRS services being provided by their CMRS affiliate.

C. The Commission Should Amend Part 90 As Necessary To Permit The Provision Of Fixed Services By SMRs

SMR Systems, Inc. and Digital Radio, L.P. stated that the Commission should amend Section 90.419 of its Rules to ensure that SMRs may provide a broad range of fixed services.^{6/} As written, Section 90.419 limits the ability of SMR licensees to provide fixed services. Therefore, Nextel agrees that it must be amended if SMRs are to be permitted to offer the fixed services intended by the Commission in its proposal.

III. CONCLUSION

Nextel supports the Commission's proposal to provide wireless carriers the ability to add to their "menu" of services because, whether additional fixed or mobile services, these services add to the value of the services offered to consumers. Fixed services increase the CMRS provider's operational flexibility, promote competition among the competing CMRS providers, and thereby benefit the public with new, improved, and more economical telecommunications services.

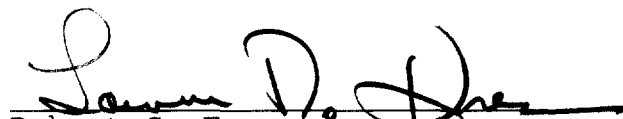
However, these results will only be attained if the Commission amends its rules to ensure that all CMRS providers are permitted to offer fixed services and continues to regulate all CMRS services,

^{6/} SMR Systems, Inc. and Digital Radio, L.P. at 4.

including fixed services, under existing CMRS rules and regulations.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Robert S. Foosaher", written over a horizontal line.

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Dated: March 25, 1996

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 25th day of March 1996, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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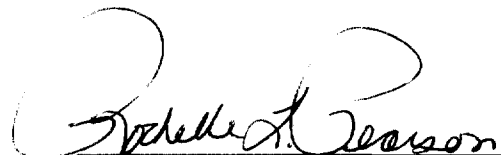
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